



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Opti-Lite Optical

File: B-281693

Date: March 22, 1999

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Department of Veterans Affairs, for the agency.

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GAO, participated in the preparation of the decision.

DIGEST

Source selection decision is not reasonable where the record does not provide any documentation or explanation which supports the price/technical tradeoff, and the award determination was based entirely on a comparison of total technical and price point scores under a solicitation which does not provide for such a point-based tradeoff.

DECISION

Opti-Lite Optical protests the award of a contract to Classic Optical Laboratories, Inc. under request for quotations (RFQ) No. 663-56-98, issued by the Department of Veterans Affairs (VA) for commercial item prescription eyeglasses and services for VA beneficiaries.¹ Opti-Lite principally contends that its offer was improperly evaluated and that the agency's selection decision was unreasonable.

We sustain the protest.

The solicitation, issued September 9, 1998, contemplated the award of an indefinite-delivery, indefinite-quantity requirements contract to supply prescription eyeglasses on an as-needed basis to listed participating VA facilities. The solicitation listed 85 specific items or services for which offerors were required to provide a unit price. RFQ Part 1, § A. The solicitation provided for award to the responsible offeror whose conforming offer was most advantageous to the government. The stated technical evaluation criteria consisted of methodology of approach, personnel

¹While the solicitation is denominated as an RFQ, the agency treated it as a negotiated procurement and the entire record, including the RFQ provisions, speaks in terms of the submission and evaluation of proposals/offers and the resulting award of a contract. In order to avoid confusion, this decision will use the latter negotiated procurement terminology throughout.

qualifications and past performance. RFQ Part IV, at 103. Under past performance, the solicitation required offerors to submit a minimum of four references with evidence of their organization's qualification, experience and achievements with relevant ongoing contracts, or contracts that have been completed within the past 3 years. Id. at 104. The solicitation further provided that technical and past performance combined were approximately equal in weight to price. Id. at 105. Additionally, offerors were encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the solicitation requirements, and were cautioned that the agency reserved the right to award on the basis of initial offers without holding discussions. RFQ Part III, at 99, 102.

Six offerors responded to the solicitation.² Opti-Lite submitted two separate price proposals; in both of them for many items, it entered "0." On October 20, the contracting officer contacted Opti-Lite to clarify whether entries of "0" in Opti-Lite's price proposal meant no bid or no additional charge. Agency Report (AR), exh. 1, Contracting Officer's Statement, at 2. Opti-Lite faxed a clarification letter stating that all items marked with a "0" would be "supplied when ordered at no additional charge." AR, exh. 3, Letter from Protester to Contracting Officer (Oct. 20, 1998). As a result of the technical evaluation, Classic's offer received 92 out of 100 points for technical merit and was ranked first, and the protester's offer received a technical score of 70 and was ranked third. AR, exh. 4, Award Memorandum, Nov. 18, 1998, at 1. Because the protester's evaluated price of \$624,380 was the lowest, it was awarded the top score of 100 for price. Id. at 2. Classic's second low evaluated price of \$706,854.23 received a score of 88. The contracting officer then added the technical and price scores to determine the highest-ranking offer. Classic's offer received the highest total point score of 180 and the protester's was second with a total score of 170. Id.

Classic's pricing was compared to current contract prices and was found to represent a savings of 8 percent. The protester's prices were approximately 18 percent lower than current contract prices and were 12 percent lower than Classic's. However, the contracting officer was concerned that the protester's "unrealistic" price proposal might jeopardize performance. Id. The contracting officer concluded that, based on the protester's pricing scheme, it was possible to order complete sets of glasses at no charge. The contracting officer's award memorandum concludes that award to Classic was warranted based on Classic's highest combined total score. Id. at 3. The protester was notified of the award by letter dated November 20, and was provided a debriefing by letter dated November 25. The debriefing letter advised the protester of deficiencies pertaining to its methodology and approach, its support for the professional qualifications of its personnel, and its failure to identify the subcontractors it intended to use in the

²A seventh offeror did not include a technical proposal and was not considered.

course of performance. AR, exh. 6, Letter from Contracting Officer to Protester (Nov. 25, 1998).

Opti-Lite protested to the agency by letter dated December 2, alleging, among other things, that the agency's decision not to allow alternate pricing proposals was a major change requiring the agency to request best and final offers, that the agency erred in failing to check its past performance references, made at least six mathematical evaluation errors, improperly penalized Opti-Lite for failure to include subcontractor information in the past performance section when no subcontractors were used or requested, and failed to give any weight to Opti-Lite's claim that it is over 1,000 miles and 2 shipping days closer to the locations of contract performance than the awardee. AR, exh. 7, Letter from Protester to Contracting Officer 2-3 (Dec. 2, 1998).

The contracting officer reviewed Opti-Lite's allegations and discovered that some irregularities had occurred in the evaluation of the protester's proposal. Errors had been made in evaluating Opti-Lite's past performance in the technical evaluation and in computing estimated quantities for the price evaluation. The contracting officer prepared a revised award memorandum dated December 7, in which Opti-Lite's proposal was given the maximum score for past performance, thus adding three points to its technical score, which still placed Opti-Lite's offer in the third position for technical merit, 19 points below that of the awardee. AR, exh. 8, Award Memorandum--Revised, Dec. 7, 1998. Since Opti-Lite had received the maximum number of points for its price proposal, that score remained unchanged. In the final ranking, Opti-Lite's total point score remained second, nine points below that of the awardee.

The contracting officer denied Opti-Lite's protest by letter dated December 8 and advised Opti-Lite that he used option No. 2 in the evaluation as directed by Opti-Lite in its letter dated October 20. AR, exh. 9, Letter from Contracting Officer to Protester 1 (Dec. 8, 1998). Opti-Lite had previously been advised award to Classic was appropriate based on Classic's high "total score for technical and price." AR, exh. 6, Letter from Contracting Officer to Protester 2 (Nov. 25, 1998). This protest to our Office followed.

Opti-Lite challenges the agency's evaluation of its technical proposal and maintains that it was wrongly denied an award because it was a highly technically qualified offeror under a solicitation for which it proposed the lowest price and contends that the agency's concerns about its performance risk are due to a lack of understanding of Opti-Lite's pricing methodology.³

³In its protest to our Office, Opti-Lite repeated the allegations from its agency-level protest that the agency failed to verify its past performance references, made
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While this is a commercial items purchase, it was conducted using negotiation procedures. See FAR § 12.203. In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the solicitation specifies that price will be the determinative factor. Shirley Constr. Corp., B-240357, Nov. 8, 1990, 90-2 CPD ¶ 380 at 6. Here, the solicitation provided that award would be made to the offeror whose proposal was most advantageous to the government considering price and other factors. Consequently, the contracting officer had the discretion to determine whether the technical advantage associated with Classic's proposal was worth its higher price. This discretion exists notwithstanding the fact that price and technical factors were of equal weight. However, the propriety of such a price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the solicitation evaluation scheme. Cygnus Corp., B-275181, Jan. 29, 1997, 97-1 CPD ¶ 63 at 11.

In order for our Office to perform a meaningful review of an agency's selection determination, an agency is required to have adequate documentation to support its evaluation of proposals and its selection decision. Biospherics Inc., B-278508.4 et al., Oct. 6, 1998, 98-2 CPD ¶ 96 at 4; Arco Management of Washington, D.C., Inc., B-248653, Sept. 11, 1992, 92-2 CPD ¶ 173 at 3. While adjectival ratings and point scores are useful as guides to decision-making, they generally are not controlling, but rather, must be supported by documentation of the relative differences between proposals, their strengths, weaknesses and risks, and the basis and reasons for the selection decision. Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4; Arco Management of Washington, D.C., Inc., supra, at 3.

Here, it is clear from the record that the source selection decision was based on a purely mechanical application of the numerical scores for the technical factors and price. The contemporaneous documentation of the agency's evaluation process in the report to our Office consists of copies of the technical evaluation completed by the evaluation team members, the price evaluation conducted by the contracting

³(...continued)

several mathematical evaluation errors, improperly penalized it for failure to include subcontractor information, failed to give weight to the fact that it is over 1,000 miles and 2 shipping days closer to the locations of contract performance than the awardee, and improperly refused to release technical evaluations and scores. In its comments to the agency report submitted in response to this protest, Opti-Lite acknowledges that the agency took corrective action with respect to many of the evaluation errors. Since the protester's did not respond to the agency's position in its comments with respect to the other allegations, we deem these allegations abandoned. TMI Servs., Inc., B-276624.2, July 9, 1997, 97-2 CPD ¶ 24 at 4 n.3.

officer and the original and revised award memorandum completed by the contracting officer. The technical evaluation sheets completed by the evaluators contain numerical scores for each factor and subfactor, total point scores, and some narrative responses to certain aspects of the vendors' proposed solution.

The contracting officer's original and revised award memorandum and his statement submitted in response to this protest provide only the total technical and price scores for the proposals evaluated and in each instance state that the total score for technical and price would determine the final ranking of vendors and award. The contracting officer's award memorandum contains no hint as to the basis for the scoring of the proposals and provides no assessment of the strengths and weaknesses in the various proposals. While, in response to the protest, the contracting officer makes references to certain identified deficiencies in the protester's proposal, the contracting officer does not provide any explanation of how, based on these deficiencies in the protester's low priced proposal, or based on strengths in Classic's proposal, Classic's proposal was determined to be the more advantageous; rather he maintains his position that the total point scores per se justified the award to Classic.

Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. Federal Acquisition Regulation § 15.308 (FAC 97-02). It is improper to rely, as the agency did here, on a purely mathematical price/technical tradeoff methodology. See Teltara, Inc., B-280922, Dec. 4, 1998, 98-2 CPD ¶ at 4; General Offshore Corp.-Riedel Co., a Joint Venture, B-271144.2, B-271144.3, July 2, 1996, 96-2 CPD ¶ 42 at 8.⁴ In this case the tradeoff is inadequate because, beyond the mechanical comparison of the total point scores, the contracting officer made no qualitative assessment of the technical differences between the offers from Classic and Opti-Lite to determine whether Classic's technical superiority justified the cost premium involved.

In its submissions in response to the protest, the VA now maintains that Opti-Lite's below-cost proposal for various line items creates a risk of poor performance, and, in this manner, attempts to create a tradeoff rationale. However, the contemporaneous analysis of the contracting officer was in terms of financial capability to perform the contract at Opti-Lite's low price:

⁴We recognize that an agency properly may use a mathematical tradeoff formula where the formula is explicitly set forth in the solicitation and is structured in a manner which encompasses a reasoned cost/technical tradeoff.

Opti-Lite price proposal is unrealistic. Opti-Lite proposed that 71 out of 85 line items are offered at no cost to the government. It is very unlikely that a contractor could perform this service without compensation for all the line items offered at no cost.

AR, exh. 4, Award Memorandum, Nov. 18, 1998, at 2. The contemporaneous concern about Opti-Lite's price reasonableness, therefore, was in reality a concern about its responsibility. See Envirosol, Inc., B-254223, Dec. 2, 1993, 93-2 CPD ¶ 295 at 5-6. To the extent that the agency found Opti-Lite nonresponsible, it should have referred the matter to the Small Business Administration (SBA) for review under its certificate of competency (COC) procedures, because Opti-Lite is a small business. 15 U.S.C. § 637(b)(7) (1994); FAR § 19.602-1(a).⁵

Since we find that the agency failed to document the reasonableness of its tradeoff decision, we recommend that the agency perform and document a proper tradeoff analysis. If the agency believes that Opti-Lite is nonresponsible, the matter should be referred to the SBA for COC consideration. If a different award determination results, the agency should terminate Classic's contract for the convenience of the government. In addition, we recommend that the protester be reimbursed its costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1) (1998). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
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⁵Opti-Lite also objects to the agency's decision not to consider both of its price proposals. However, on October 20, the contracting officer requested Opti-Lite to elect which of the two price proposals should be used for evaluation purposes. Opti-Lite instructed the contracting officer to disregard its price proposal option No. 1 and to use its price proposal option No. 2. In our view, since Opti-Lite consented to have only its option No. 2 price proposal evaluated, and did not object at the time, Opti-Lite does not have a valid basis to protest that only one of its price proposals was evaluated.